



BOARD OF ETHICS
SHELTON, CT
SPECIAL MEETING – JANUARY 10, 2007

Call To Order/Pledge of Allegiance

Chairman Maria Davis called the meeting of the Board of Ethics to order at 7:09 p.m. in Room 104 at Shelton City Hall. The Pledge of Allegiance was recited.

Roll Call

Maria Davis, Chairman – present
Christine Robinson – present
Byron Peterson – present

Also Attending:

Alderman John “Jack” Finn
Alderman Randy York – arrived 7:23 p.m.

1. Accept the Minutes of the Regular Meeting of December 7, 2006

Motion was made by Christine Robinson, seconded by Byron Peterson to accept the minutes of the Regular Meeting of December 7, 2006. Passed unanimously **3-0**.

Chairman Davis inquired if a separate motion was needed to approve the supplement? The clerk noted that the supplement, when it was completed, was attached to the minutes in the Town Clerk’s Office, but that the original minutes submitted met the qualifications of minutes per FOI.

2. Continued Discussion of Proposed Ethics Ordinance

Chairman Davis asked if we have a new redlined version? The clerk replied I have not received anything.

Chairman Davis said we should look through the minutes of December 7, 2006 Supplement to see some of the things we were talking about and whether we want to address them or not, etc.

Chairman Davis noted that Alderman Anglace brought this up: ***Section 5.(d) “No complaint may be made under this section except within three years next after the violation alleged in the complaint has been committed.”*** How do you feel about the three years?

Chairman Davis said that she has not researched this to see what anyone else may have just to see if ours is out of the ordinary. Mrs. Robinson stated that this has been since the very beginning and in the original ordinance. Chairman Davis said I do not have an issue with it. The complaints that we’ve seen have been fairly timely. Mr. Peterson stated he had no issue with the timing. When they are going to register a complaint, it will be within a short period of time. My next question would be what would be reasonable ... one year ... two years? Chairman Davis said it hasn’t been an issue and I would say leave it and I will look to see what some other cities and towns are doing, and if I find that it’s odd, I will bring it to the attention and we can discuss it again.

Chairman Davis stated under **Section 5.(e)**, Attorney Welch had a suggestion to change the phrase “*of this part*” to “***of this ordinance.***” Mrs. Robinson stated that’s fine and it appears twice. I don’t know if it’s mentioned anyplace else. I think it’s global.

Chairman Davis commented that this is something Attorney Welch, when he looks at it, he’ll tell us whether that’s the correct terminology so no legal meanings are changed.

Chairman Davis noted that Alderman Anglace makes a good point that **nowhere in the ordinance is probable cause defined.** Mrs.

Robinson stated it can be added in our definitions. Mr. Peterson asked if it's in any of the other ordinances? Or you can look at the State for its definition of probable cause?

Chairman Davis stated I can look and see if there's a definition from the State or we can ask Attorney Welch if he can give us a definition. The Board agreed. Mrs. Robinson read Stratford's definition of probable cause: "*suggests that there is sufficient evidence that an ethics violation may have occurred that then calls for an official inquiry.*" The Commission has the right to call witnesses to get information.

Mrs. Robinson explained that the Town of Stratford has a Citizens Complaint Guide that is very nice.

Chairman Davis refers to Section 5.(c) of Shelton's proposed ordinance and reads, "*if the board finds, after a hearing pursuant to this section, that there is no probable cause to believe that a public official or employee has violated a provision of this part or that a public official ...*" Mrs. Robinson said I think what Alderman Anglace was referencing was the fact that we have all these definitions and we don't have a definition of probable cause. We have a definition of business. We have definitions of less minor things than probable cause. Chairman Davis said why don't we, for now, take the one similar to Stratford's and then talk to Attorney Welch about it and find out if it's appropriate or not.

Mrs. Robinson noted that she has looked through all the ordinances that she has and none of the other towns have a definition for probable cause. That's why we did not have it.

Chairman Davis states that Alderman Anglace inquires **what "evaluation" means**. It sounds like we are using evaluation instead of investigation so we can just switch those words. **We can change evaluation to investigation**. The Clerk asked, in just this section? Mr. Peterson suggested we might want to see where we use that term in a section just to be sure we are consistent in the use of it. Mrs. Robinson reads **Section 6.(a)** in its entirety. In this particular case I do not see a problem with replacing with investigation. Mr. Peterson said it sounds like investigation is

right. Mrs. Robinson stated a board is investigating a possible violation of this ordinance. I don't see a problem changing it.

Mr. Peterson refers to Section 6.(b), (c), (d), and (e) where they use the word investigation. Mrs. Robinson said be consistent and use the word investigation. Chairman Davis agreed.

The clerk explained that she will make the changes via redlined version and you will see where each change is made.

Mrs. Robinson notes that Alderman Anglace had inquired about preliminary investigation versus investigation. **Everything should be investigation ... no 'preliminary.' And change all the evaluations to investigations.**

Chairman Davis reads **Section 6.(c)** and noted at the last meeting that Alderman Anglace stated that we presume that the termination of the investigation will be known in some manner? The Board replied yes.

Chairman Davis said part of this section is talking about penalties and leaking information ahead of time. We all agree that something should not be announced prior to filing of the complaint and about putting automatic penalties in place and who has the power and that is something that Attorney Welch has to tell us about. Mr. Peterson said the question is do we have the authority to fine anyone who breaches the confidence of process prior to it being filed? Like, should I spank my kid first before they pick up the candy and take it? Mrs. Robinson said the Board of Aldermen would have to make that decision and the police would have to put in the fine. Mrs. Robinson said we need guidance from Attorney Welch. Chairman Davis said we can enforce it. You hope that everyone is going to do what is right, but even if something happens, you have to investigate that. I don't know when they should be addressed ... during it ... after it? Mrs. Robinson said at the same point you don't want to ignore the complaint if it's leaked. Mr. Peterson said that's true, it may be valid.

Mr. Peterson said I think we need to check with Attorney Welch on a couple of things. First, do we have the power to do anything along the lines? Second, where should that authority reside?

Mrs. Robinson said what if it's investigating an alderman? You can't let the aldermen make the decision. It needs to be separate.

Chairman Davis asked the clerk to put a memo together of the items we want to ask Attorney Welch. The clerk noted she will type a cover memo along with the minutes and send to Attorney Welch.

Mr. Peterson said another thing, how do you deal with officers and officials versus employees? An employee you can treat differently from a non-employee. We could be much stiffer with an employee by putting something in their file that they breached confidentiality versus an official or an officer. Chairman Davis noted that's interesting. Mrs. Robinson commented that disciplinary action can be taken for the employee, but disciplinary action cannot be taken for an official, per se.

Mr. Peterson said the City could make the ethics ordinance part of your employment, therefore, violating your employment agreement, and therefore, you are subject to discipline. But if you are not an employee, what do we have for discipline? Mrs. Robinson said if he is an employee, then the next question is, is it grounds for what type of discipline? Is it immediate termination? Perhaps, depending upon what the violation is. I don't know. Is it going to be verbal warning? Written warning?

Mrs. Robinson commented now we are talking like managers. Mr. Peterson agreed that's the problem being the Ethics Officer at work. I show no mercy to employees that violate (unclear). Mrs. Robinson said, right because they are hired with that understanding and sign off on it when they are hired.

Mr. Peterson said if you do that for an employee, you have to say I have read and will follow the ordinance subject to the policies and procedures of the City. That's for an employee. What does it mean for an official or an officer who is elected or appointed?

Mrs. Robinson commented that's where it gets complicated. Mr. Peterson said we will see what Attorney Welch says.

Mrs. Robinson noted that on Page 4 of the Supplement Minutes of December 7, 2006 meeting Alderman Finn did say that he believes what Alderman Anglace is saying is it should end up with the Board of Ethics. The Board of Ethics makes the decision, decides what the penalties are – it can't be any more than \$100 – we know that. And it should not come back in front of the Board of Aldermen. I agree because we could be doing this for one of the aldermen.

Chairman Davis said he is saying that it's part of the ordinance. Maybe we should just scratch that part out of the ordinance. Mrs. Robinson said I think we need to have a written process in place if we have to do this. We don't have a written process in place. If we get to that point, we need to know exactly how it needs to be done and who is going to do it. Back to Mr. Peterson's point of do we do it one way for one and something else for another? We would have to ask Attorney Welch.

Chairman Davis said how do we want to handle **Section 6.(d)**? Do we want it to end with us? Mr. Peterson noted there is contradiction there. Let's bring it up to Attorney Welch and ask if we can take it out so that we remove any misunderstanding and if we do, what do you put in its place? Mrs. Robinson said we may need a separate meeting just to discuss that. We can't answer all the questions here because we don't have any guidance. Don't forget, it's \$100 for each offense. Mr. Peterson said we are bound by that maximum, not the FOI Commission.

Chairman Davis said the question we want to ask Attorney Welch is if it can stop with us? Do we even have the right to suggest that? We can take it out and if it goes to the Aldermen, they can change it still. They may not be privy to some of the information, especially if it's a closed investigation/hearing. If they are not part of it, it's hard for them to make the decision. Depending on the severity of it, we would make our best judgment.

Mrs. Robinson said maybe originally when this was put in stating that there would be a penalty of \$100 for each offense was suppose to be a deterrent for people to do it.

Chairman Davis said that's for leaking confidentiality. What I am talking about is whatever our finding is, per se, for a complaint that had happened. Whatever that person did, it warrants that they made an error, they understand the error, they can stay in the position, we don't see that there should be any further penalty and we suggest that. Or, there is someone that we felt was very bad and we think they should be censored or removed and that would be our suggestion. Mr. Peterson said you bring up a good point. How will they make a decision on our recommendation without knowing the facts of the case? And how do we provide that without breaching the confidentiality of the case? Do we note that the aldermen must go into closed session along with us? That may be something to write in, if there is a point where they need a commission to determine if our finding is to be accepted or not accepted. What do we do? Chairman Davis said we can always get guidance from the attorney. We can't really tell them anything because we would be breaking confidentiality. Mrs. Robinson said so if it is going to end with us, we should be able to use our attorney for guidance.

Chairman Davis said we would report to the aldermen what actions we have taken. Mr. Peterson said in most cases the question will come up, "how did you come up with that decision?" That is where we are in a dilemma. How far can we go? Chairman Davis said so I guess we need to know if we even have the authority to do that or if it just needs to be written into the ordinance.

Mrs. Robinson repeated then we need a clear-cut process flow of how it's going to take place so that there are no questions.

Chairman Davis said it sounds like Alderman Anglace is saying that it should end with the Board of Ethics. That's what I am reading in here. Mr. Peterson and Mrs. Robinson agreed.

Chairman Davis said we talked about how FOI had different fining. We did decide that we would make the change for **Section**

6.(e) where the probable cause not later than five business days is in conflict with **Section 6.(c)** where it states 15 business days, so we said **we would make them both 15 business days**.

Chairman Davis referred to **Section 8. Disclosure**. Mr. Peterson commented there had been an article in the paper about one of the towns in the Valley concerned about financial disclosure.

Chairman Davis stated my feeling is that we should have it. I think with everything going on in the State, for reasons that I've been reading that communities have it, it's so that the public will have trust in the public officials and it's really a trust mechanism. I don't think any of that information that we are asking is awful information. I look at it and it says: Where do you live? Do you do business in town? For a lot of individuals, they don't do business in town. They work someplace else and it's not an issue. Some of that information is public information anyhow. It's just a matter that you have to gather it in a different spot. If someone really wanted to find out some of that information, they probably could. It's time consuming, but they could do it.

Mr. Peterson said it is our intent to be sure that there is no conflict of interest between an individual and a business they may be doing with organizations that do things with the city. That's what we are really after. Be sure that there is no influence on them or their family should it lead to a sticky situation. If they know of the sticky situation, they can recuse themselves individually, but it gives us some guidance that you go back and say they already acknowledged this. We have enough people here that do consulting work, contract work. Chairman Davis said it's just a matter of writing it down.

Mrs. Robinson said the question that comes into play if this is done annually, if something changes midway thru the year, do we ask them to fill it out or just leave it alone and wait until the year comes up again? And we are back to the same question, who is taking care of this? Chairman Davis stated I don't think we should worry about that issue right now. We include it and then figure out how it's going to work. Obviously, it is going to have to be filed somewhere because it is going to be public information. It will be

in the Town Clerk's Office. Chairman Davis continued, if we don't take that first step of deciding whether it's going to be in there or not in there, then we can address afterwards, if it makes it through there, where's it going to be?

Mr. Peterson said the other concern is if we do leave it in there, who should really be covered by this consistent with our requirements? If we say all elected officials, all appointed officials, but not employees. Chairman Davis stated a lot of employees have to fill out ethical forms each year. My husband came home and stated he had to fill out this form. It asks about spouse, relatives, do business with any contractors? It was pretty lengthy.

Mr. Peterson said it is and I have a conflict of interest form I require every official, every executive in my firm, every decision-maker of finances, which includes all people in Purchasing, anyone who would have any opportunity of being influenced. Internationally I have 1,800 people, 480 of those are filled out, so that's one-fourth of the population fills it out. But the ethics, everybody is responsible for and we give a refresher course every year. Everybody signs it. Mrs. Robinson commented that's right, I have to and all my staff. It's done on the annual review. There is a form that they have to read and sign annually. It's a confidentiality form.

Mrs. Robinson said maybe the direction should be to make it a statement rather than a disclosure. Mr. Peterson said make it a Conflict of Interest Statement, but have some of the same words in there: "Do you or a member of your immediate family ...". So basically it's a yes or no. If the answer is yes, you list the conflicts. Chairman Davis said that would be combining the two. Mrs. Robinson said then you are not requiring them to write out all that information. We did discuss that at one point; that it's challenging. Perhaps it would be better to be a statement and the ownership goes on them and it's yearly.

Tape 1 – Side 2

Alderman York interjected that she will obtain one from the State of CT that you can look at. The Board thanked her.

Mrs. Robinson said let's look at the one from the State, one from Mr. Peterson's company, I'll bring mine and we can look at them and create one that works for us and then let Attorney Welch look at it. That will hopefully satisfy both sides.

Motion was made by Christine Robinson, seconded by Byron Peterson to take a 5-minute break. Passed unanimously **3-0**.

Meeting paused at 8:00 p.m.

Motion was made by Christine Robinson, seconded by Byron Peterson to reconvene the meeting. Passed unanimously **3-0**.

Meeting reconvened at 8:04 p.m.

Attending:

Maria Davis, Chairman
Christine Robinson
Byron Peterson
Alderman John "Jack" Finn
Alderman Randy York

Section 9. Duty to Disclose. Chairman Davis stated I took Duty to Disclose as if you know that someone is doing something wrong that you are suppose to disclose it. Not in a sense where Alderman Finn sends a letter about there being a possible conflict. I feel that falls in a different section of the ordinance. Mrs. Robinson said I thought this duty to disclose is if you knew of a violation. Chairman Davis said that's how I read it, but if you read what Alderman Anglace is saying in here. Mrs. Robinson said maybe we need to add an additional part to it. There is a duty to disclose if you know of a violation. There is a duty for you to disclose when there is something coming up that may be a conflict. **Maybe we just need to add a Section (c) to this to cover all the aspects of disclosing.** Mr. Peterson said maybe you can add a section, if you believe there is a violation, to cover yourself. Mrs. Robinson commented it's your responsibility to disclose that he may be in a

conflict of interest. The way this is written, it is only talking about if you know of a violation. Mr. Peterson said we might want to add something under (a) to clarify both a violation and a perceived for both you and someone else and (b) would be if you are aware of a potential conflict. Mrs. Robinson stated one is disclosing a violation and the other one is disclosing a possible conflict of interest. It covers both things under the title of Duty to Disclose.

Chairman Davis noted that Alderman Anglace inquired where the **due process** is spelled out? Mr. Peterson said **if it's defined by law, let's put it in there.**

Chairman Davis said under **Section 10. Whistleblower** I think we decided to keep it the same.

Chairman Davis said the under **Section 12. Advisory Opinions** it says all advisory opinions will remain confidential. I thought Attorney Welch said we couldn't do that. I remember discussing about them being confidential unless we put all the facts that someone is bringing to you, someone may say it's alright for so and so, so then it's alright for me, but it may not really be the same set of facts. But I thought Attorney Welch said we couldn't do that. Chairman Davis directed the clerk to inquire Attorney Welch's opinion.

The Board referred to the Ethics Minutes of October 5, 2006, Page 15.

Chairman Davis asked can they request it to be confidential? I don't know. Instead of us saying it has to be, can it be the same thing as an investigation? The person has the right to say whether it's public or private. I was more looking out that every situation is slightly different. You wouldn't want one person to be based on someone else's question. I guess we can write it in such terms to say if they asked a question and be very clear if the fact is this, this and this, then this is what the response will be. We would have to be very precise on what we gave for an advisory opinion if it was public. Mrs. Robinson stated we are saying it could be used as a defense if there is a complaint brought up. Mr. Peterson said in my notes, I crossed it out of the ordinance.

Mrs. Robinson noted that Attorney Welch stated, *“I know you want people to have the right to ask the question and where does that lead you? But I do want to look at that.”* Chairman Davis said I guess it depends on who the advisory opinion applies to. Does it apply to the person asking it? Or to everyone who feels they fall in that situation? Mr. Peterson said someone could ask us a question as a prelude to filing a complaint who may not have all the information.

Mr. Peterson noted **Standards of Conduct**. Mrs. Robinson asked, should it be part of the ordinance or not? I don't think we want the Standards of Conduct to be part of the ordinance. If we are leaning towards now a disclosure statement, this goes with it as the annual process. Mr. Peterson said to reinforce the **Standard of Conduct**. I don't think we have to have them sign for it. It's a reminder.

Mr. Peterson said there was discussion on false statements at the last meeting. Chairman Davis said that is basically more of a procedure thing. I guess we want people under sworn, because it's only a false statement if they are sworn. If they are not, well ... then I guess it's just a lie.

Chairman Davis reviewed the October 5th minutes to see if there is anything we haven't talked about. Mrs. Robinson said we may need to go back to the November minutes where there was **discussion about no officer or employee shall hold two or more positions in the city.**

The Board refers to the Ethics Minutes of November 27, 2006, Page 7.

Chairman Davis reads that Corporation Counsel states, *“The reason I deleted it was based upon our discussions that I think the Charter controls.”* Mr. Peterson quotes from **Section 5.5(c) of the Charter** “members may hold no more than one public elected office and/or two other appointed offices in the city.” They key on the word ‘other.’ It's silent on whether or not an alderman can hold another elected or appointed office. Mrs. Robinson said they took it out. Then we are fine.

Chairman Davis refers back to the minutes of October 5 on Page 11 where Alderman Finn suggests inserting some words into the **Savings Clause, Section 13**. The State Code of Ethics does not apply to municipalities. Mrs. Robinson reads the section to say *“Should any provision of this Code of Ethics conflict with any provisions of Federal Law or the State of Connecticut General Statutes, in such event, the provision of the Federal Law or the State of Connecticut General Statutes shall prevail.”* Alderman Finn would like to insert the words *““be less stringent” or conflict.”* Mr. Peterson said basically he is saying that one of these would apply should we be less stringent. In other words, the stronger of what exists is what we adhere. The Board agreed it can be inserted.

Mrs. Robinson refers to Page 18 of the November 27, 2006 Ethics Minutes under **Section 2.(7)** the word **“concerned”** should be replaced with **“...considered as immediate family.”**

Mrs. Robinson notes on Page 18 of the November 27th minutes Attorney Welch is suppose to give us the definition of **‘incompatible offices.’**

Mr. Peterson noted that from the proposed ordinance, **Section 7. Non Discrimination** was moved to Section 3. as #18 and #19.

Chairman Davis said **Section 5.(c)** about the City paying reasonable legal expenses of the respondent. I don't know if we can do that or not. Chairman Davis reads from Page 28 of the November 27, 2006 minutes. *“Provided that the respondent or his attorney approach Corporation Counsel and understand that he works at the rates that counsel works at (city going rate), that we probably would put a maximum on it.”* Chairman Davis stated it says reasonable. Mrs. Robinson said I think he just doesn't want to be higher than what the city would be paying to their attorney. If the City Attorney is getting paid \$50 an hour, then that's all we are paying him is up to \$50.00. If they get a bill for \$75.00, tough luck, you are only getting paid for \$50.00. Chairman Davis commented that is exactly what he is saying. Mrs. Robinson suggested, “shall pay the reasonable legal expenses of the

respondent – not to exceed the present city corporate rate.” Mr. Peterson said it should say “then going rate.”

Sentence should read, “(c) If the board finds, after a hearing pursuant to this section, that there is no probable cause to believe that a public official or employee has violated a provision of this part or that a public official or employee has not violated any such provision, or if a court of competent jurisdiction over-turns a finding by the board of a violation by such a respondent, the City shall pay the reasonable legal expenses of the respondent not to exceed the then going city corporate rate or by the court if appropriate.”

Mrs. Robinson summarized that if that attorney wants to charge extra, then he can and the respondent has to realize that anything above the city rate, you are paying it out of your pocket if you want this attorney. That’s really what it means.

Chairman Davis said I would just question is our rate more than other surrounding areas? I don’t know that it is or it isn’t. Is our rate reasonable? I am assuming our rate is reasonable.

Mrs. Robinson said that’s their fee itself. What about charging for all these crazy things? Chairman Davis said I don’t think we have anyway to stop that. Their record keeping system is for a phone call, you get charged for a phone call. I don’t know how you prevent that. I guess by the reasonable rates, they are not going over the city rate. Mr. Peterson said that was a concern in Milford.

Mr. Peterson said at least going into it, you know you have a portion of it paid. If you decide to get the platinum law attorney, we’ll pay the copper rate, you pay the difference.

Chairman Davis asked the Clerk to work on making changes that we have so we have something a little cleaner to look at. Mrs. Burke stated that she will work off the redlined version that Attorney Welch e-mailed which was done for the November 27th meeting. I will work from that.

Mrs. Robinson asked if a footer could be placed on each page showing the latest version date. It's getting complicated now.

Next Meeting:

The Board checked that next month's meeting is Thursday, February 1st at 7:00 p.m. Looks good on everyone's schedule.

Adjournment

Christine Robinson moved to adjourn the meeting. Byron Peterson seconded. Motion passed unanimously **3-0**.

The Special Meeting of the Board of Ethics adjourned at 8:50 p.m.

Respectfully submitted,

Cyndee Burke, Clerk